

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Update to
Commission's Policies and Procedures Related to
Electromagnetic Fields Emanating from
Regulated Utility Facilities.

Rulemaking 04-08-020
(Filed August 19, 2004)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

This ruling establishes the category and schedule, need for hearing, scope, *ex parte* rules and other matters in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure (Rule).

Background

On August 19, 2004, the Commission issued Order Instituting Rulemaking (R.) 04-08-020 to determine if improvements should be made to the Commission's existing rules and regulations concerning electromagnetic fields (EMFs) associated with transmission lines or other utility electric facilities. As there is strong public interest in EMF issues, and recent EMF research findings submitted by the Department of Health Services (DHS),¹ the Commission determined that R.04-08-020 should address improvements or implementation in EMF policy.

¹ DHS released its Final Report on An Evaluation of the Possible Risks From Electric and Magnetic Fields (EMFs) From Power Lines, Internal Wiring, Electrical Occupations, and Appliances in June 2002. (DHS EMF Report.)

On October 28, 2004, a Prehearing Conference (PHC) was held to identify parties, discuss issues and the need for hearings. At the PHC, parties expressed a desire to file comments and reply comments regarding the scope of the proceeding, and indicated that issues could be resolved in workshops, or possibly evidentiary hearings. Comments and reply comments were submitted on December 31, 2004, and January 28, 2005, respectively.

Pursuant to Rule 6(c)(2), no party objected to the preliminary determination in R.04-08-020 regarding the categorization of this proceeding as quasi-legislative, although some parties requested that the scope be expanded as discussed below.

Category, Need for Hearing and Schedule

Pursuant to Rule 6(c)(2), I affirm the Commission's preliminary determination in R.04-08-020 that the category for this proceeding is "quasi-legislative," that hearings are required,² and that the proceeding will conclude with the issuance of a Commission decision by December 2005. In no event shall a decision be issued any later than 18 months from the date that this scoping memo is issued.

The assigned Administrative Law Judge (ALJ) shall hold a PHC to establish a schedule for workshops or comments to address the issues identified in the scope of this proceeding.

² It appears that the issues included in the scope of this proceeding may be initially addressed in workshops, so that is how we will proceed. If there are disputes regarding factual matters raised in the workshops or comments, then evidentiary hearings may be required.

Scope

Several parties' comments recommend that the scope of this proceeding be expanded to include: (1) Land use planning; (2) Just compensation to land owners; (3) Inclusion of EMFs as a factor in California Environmental Quality Act reviews; (4) Rewriting of General Order 131-D; (5) Determination of numerical EMF standards; and (6) Purported health effects of EMFs, as well as other issues not included in the Preliminary Scoping Memo for R.04-08-020.

I have considered all of the comments by parties, and determined that this proceeding will not include extraneous issues outside of the adopted rulemaking. Therefore, I will keep the scope of this proceeding focused exclusively on the matters set forth in R.04-08-020, and parties' requests to expand the scope of this proceeding beyond the matters identified in R.04-08-020 are denied.

In addition to requests by parties to expand the scope of this proceeding, several parties have recommended that Dr. Neutra, one of the three authors of the DHS EMF Report, be available for workshop questions. However, the conclusions of the DHS EMF Report are the consensus findings of three authors, and the report and its conclusions should be evaluated as published. Parties may comment on the findings and conclusions of the DHS EMF Report as appropriate.

Accordingly the scope of this proceeding shall address the following three issues identified in the Preliminary Scoping Memo:

1. The results of the Commission's current "low-cost/no-cost" mitigation policy and the need for modifications.

2. Explore improvement in the implementation of the existing “low cost/no-cost” mitigation policy.
3. New EMF related scientific data leading to new or revised Commission EMF mitigation policies.

Although this proceeding will focus on the three issues listed above, parties’ comments suggest useful methods to address these three issues. These methods include a review of the latest EMF Design Guidelines from respondent utilities, how the EMF Design Guidelines might apply to new projects, as well as consideration of new scientific studies such as the World Health Organization study on EMFs that is anticipated later this year. These recommendations should be considered in addressing the three scoping issues.

Ex Parte Communications and Reporting Requirements

This ruling contains an appealable determination that the category of this proceeding is quasi-legislative. Pursuant to Rule 7(d), ex parte communications are allowed without restriction or reporting requirements in quasi-legislative proceedings.

Presiding Officer

The presiding officer shall be the Assigned Commissioner, except that the assigned ALJ Bruce DeBerry shall act as the presiding officer in the Commissioner’s absence at any hearing other than a formal hearing as defined in Rule 8(f)(2).

Final Oral Argument

Any requests for final oral argument pursuant to Pub. Util. Code § 1701.3(d) and Rule 8(d) shall be included in opening briefs.

Service Lists and the Filing and Service of Documents

The official service list for this proceeding is attached to this ruling. The parties shall notify the Commission's Process Office of any address, telephone or electronic mail (email) changes to the service list. The update service list is available on the Commission's web page maintained for this proceeding:

www.cpuc.ca.gov/published/proceedings/A0408020.htm.

Parties are instructed to distribute all pleadings and testimony in electronic form to the assigned ALJ (BMD@CPUC.ca.gov.) and those parties who have provided an email address to the Process Office. This does not vacate the Commissioner's rules regarding filing of paper copies, Rule 2.5; the need to serve paper copies on any party without an email address; and the need to serve paper copies of any document that cannot be electronically distributed.

Therefore, **IT IS RULED** that:

1. This proceeding is categorized as quasi-legislative.
2. Hearings are required.
3. The scope of this proceeding is to address: (a) the results of the Commission's current "low-cost/no-cost" mitigation policy and the need for modifications; (b) explore improvement in the implementation of the existing "low-cost/no-cost" mitigation policy; (c) new electromagnetic fields related scientific data leading to new or revised Commission EMF mitigation policies.
4. The schedule for this proceeding shall be established in a prehearing conference, but in no event shall a decision be issued any later than 18 months after this scoping memo is issued.
5. Pursuant to Rule 7(e) there are no restrictions on *ex parte* communications, and therefore no reason to report on *ex parte* communications that occur.

6. Parties shall follow the instructions for service of documents set forth above.

Dated March 1, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Assigned Commissioner

Attachment: Service List

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(End of Attachment)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated March 1, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event